

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 04-30987-WRS
Chapter 7

BARNEY JAY NELSON,

Debtor

REBECCA L. DORMAN,

Plaintiff

Adv. Pro. No. 04-3099-WRS

v.

BARNEY JAY NELSON,

Defendant

MEMORANDUM DECISION

This Adversary Proceeding came before the Court for trial on December 9, 2004. The Plaintiff Rebecca L. Dorman appeared pro se. Defendant Barney Jay Nelson was present in person and by counsel Gary A. Backus. The Court heard testimony and considered documentary and photographic evidence. For the reasons set forth below, judgment is entered in favor of Plaintiff Rebecca L. Dorman. It is determined that the indebtedness owed by the Debtor, to the extent of \$3,398.00 is excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

FACTS

On April 7, 2004, Defendant Barney Jay Nelson filed a petition in bankruptcy pursuant to Chapter 7 of the Bankruptcy Code. On July 6, 2004, Dorman filed an objection in the main case file. (Case No. 04-30987, Doc. 12). Construing Dorman's filing as a motion to extend the complaint bar date, the Court extended the bar date to September 10, 2004. (Case No. 04-30987, Doc. 15). On August 27, 2004, Dorman filed a timely complaint seeking a determination that the indebtedness owed her is excepted from discharge pursuant to 11 U.S.C. § 523(a)(6)(debts for willful and malicious injury to person or property of another are excepted from discharge).

Dorman was Nelson's landlord, renting him a residence. Dorman evicted Nelson for nonpayment of rent in 2002. Dorman submitted photographic evidence at trial showing that Nelson left the residence in an appalling condition. The residence was so badly trashed that Dorman contends that the Court may infer the requisite malice from the condition of the home. The Court, having heard the testimony of witnesses and having examined the photographic evidence finds that Dorman has carried her burden of proof. The Court finds that Nelson willfully and maliciously damaged the residence.

Dorman brought suit in the District Court for Montgomery County, Alabama, having received a judgment in the amount of \$4,063.00. As Dorman has submitted sufficient evidence to prove her damages, it is not necessary for this Court to consider the preclusive effect of the judgment from the Montgomery County District Court. For purposes of this decision, this Court will assume that it is not preclusive.

Dorman submitted a detail listing of the damages, coming to a total of \$4,063.00. Having considered the specification of damages, the Court finds that all amounts are excepted from discharge, except for the past due rent in the amount of \$815.00. This amount is not excepted from discharge pursuant to § 523(a)(6), as the mere failure to pay rent does not rise to the level of a willful and malicious injury. A \$150.00 damage deposit was held by Dorman, which may be offset against the past due rent. Therefore, the net deduction from the amount requested is \$665.00. (\$815.00 less \$150.00). The amount of damages excepted from discharge is \$3,398.00. (\$4,063.00 less \$665.00).

CONCLUSIONS OF LAW

This is an adversary proceeding to determine whether an indebtedness for damages to a rental residence is excepted from discharge pursuant to 11 U.S.C.

§ 523(a)(6). This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding which may be heard and determined by a bankruptcy judge. 28 U.S.C. § 157(b)(2)(I). The Court finds that Nelson is indebted to Dorman in the amount of \$3,398.00 and that this indebtedness is excepted from discharge pursuant to 11 U.S.C. § 523(a)(6). The past due rent, in the net amount of \$665.00, is not excepted from discharge (i.e. it does discharge and cannot be collected). Dorman may proceed against Nelson and collect the amount excepted from discharge. The Court will enter judgment by way of a separate document.

Done this 10th day of December, 2004.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Rebecca L. Dorman, Plaintiff
Gary A. Backus, Attorney for Defendant